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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 DEANNA MOREY, an individual, on  
12 behalf of herself and all others  
13 similarly situated,

14 Plaintiff,

15 vs.

16 LOUIS VUITTON NORTH  
17 AMERICA, INC., a Delaware  
18 corporation,

19 Defendants.

CASE NO. 11cv1517 WQH  
(BLM)

ORDER

20 HAYES, Judge:

21 The matters before the Court are the unopposed Motion in Support of Award of  
22 Attorney's Fees, Costs, and Incentive Award (ECF No. 65), and the unopposed Motion  
23 for Final Approval of Class Action Settlement (ECF No. 68), filed by Plaintiff Deanna  
24 Morey.

25 **BACKGROUND**

26 On May 20, 2011, Plaintiff Deanna Morey, on behalf of herself and all others  
27 similarly situated, initiated this action by filing a class action Complaint against  
28 Defendant Louis Vuitton North America, Inc. ("LVNA") in the Superior Court of  
California, County of San Diego. (ECF No. 1-1 at 5-12). Plaintiff alleged that  
Defendant violated California's Song-Beverly Credit Card Act, Cal. Civ. Code §

1 1747.08, by requesting and recording personal identification information when shoppers  
 2 used a credit card for purchases at Louis Vuitton retail stores.<sup>1</sup> On July 8, 2011,  
 3 Plaintiff removed the action to this Court.

4 On July 11, 2011, the Honorable M. James Lorenz sua sponte remanded the  
 5 action to the state court, finding that the amount in controversy did not exceed  
 6 \$5,000,000 – the amount required for original jurisdiction to vest with this Court  
 7 pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. section  
 8 1332(d). (ECF No. 3). Defendant filed a Motion for Reconsideration (ECF No. 4),  
 9 which the Court denied. (ECF No. 7).

10 On July 21, 2011, Defendant initiated an appeal to the Court of Appeals for the  
 11 Ninth Circuit from the Court’s July 11, 2011 Order. (ECF No. 9). On January 10,  
 12 2012, the Ninth Circuit reversed, holding that the Court erred in finding that the amount  
 13 in controversy requirement under CAFA had not been satisfied. (ECF No. 16).

14 On February 10, 2012, Defendant filed an Answer to the Complaint. (ECF No.  
 15 20). On February 17, 2012, the Magistrate Judge issued a Rule 26 scheduling Order  
 16 (ECF No. 21), and discovery commenced.

17 On August 17, 2012, Plaintiff filed the First Amended Class Action Complaint  
 18 – the operative pleading in this case – in which Plaintiff alleges:

19 Defendant operates retail stores throughout the United States, including  
 20 California. Defendant was, and is, engaged in a pattern of unlawful  
 business practices whereby it utilizes a customer information capture card

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21 <sup>1</sup>The Song-Beverly Credit Card Act provides:

22 [N]o person, firm, partnership, association, or corporation  
 23 that accepts credit cards for the transaction of business shall do  
 24 any of the following: ...

25 Request, or require as a condition to accepting the credit  
 26 card as payment in full or in part for goods or services, the  
 27 cardholder to provide personal identification information, which  
 the person, firm, partnership, association, or corporation accepting  
 28 the credit card writes, causes to be written, or otherwise records  
 upon the credit card transaction form or otherwise....

Cal. Civ. Code § 1747.08.

1 which contained preprinted spaces for credit card customers to write their  
2 respective: (i) name; (ii) email address; (iii) address (including ZIP code);  
3 (iv) birth date; (iv) home telephone number; and (v) mobile telephone  
4 number. It was, and is, Defendant's policy and practice to request credit  
5 card customers to write their respective personal identification information  
6 upon the customer information capture card in the form of their: (i) names;  
(ii) email addresses; (iii) addresses; (iv) birth dates; (iv) home telephone  
number; and (v) mobile telephone number, and to subsequently enter such  
information into its electronic customer database at the point-of-sale.  
Defendant's acts and practices as herein alleged were at all times  
intentional.

7 (First Amended Class Action Complaint ¶ 2, ECF No. 32 at 2). Plaintiff proposed to  
8 prosecute this action on behalf of “all persons from whom Defendant collected personal  
9 identification information in conjunction with a credit card purchase transaction at a  
10 California retail store during the period of time beginning May 23, 2010 and continuing  
11 through the date of trial...” *Id.* ¶ 21.

12 On August 31, 2012, Defendant filed a Motion to Dismiss. (ECF No. 33). On  
13 September 28, 2012, Plaintiff filed a Motion for Class Certification. (ECF No. 37).  
14 The parties filed opposition and reply briefs to each motion. (ECF Nos. 36, 42, 50, 51).

15 On October 2, 2012, Judge Lorenz recused himself from this case and Judge  
16 Hayes was assigned. (ECF No. 40).

17 On February 13, 2013, after several settlement and case management  
18 conferences, the Magistrate Judge issued an Order indicating that the parties had  
19 reached a tentative settlement. (ECF No. 56).

20 On February 29, 2013, Plaintiff filed an unopposed Motion for Preliminary  
21 Approval of Class Action Settlement, accompanied by the declaration of Plaintiff's  
22 counsel, Gene J. Stonebarger, and several exhibits. (ECF No. 62). On August 15,  
23 2013, the Court issued an order that (1) preliminarily approved the settlement  
24 agreement; (2) provisionally certified the class; (3) conditionally certified Plaintiff as  
25 Class Representative; and (4) appointed Stonebarger Law, APC and Patterson Law  
26 Group, APC as Class Counsel. The August 15, 2013 Order ordered notice and provided  
27 detailed information to class members regarding their rights under the Settlement  
28 Agreement. (ECF No. 64).

On October 30, 2013, Plaintiff filed a Motion in Support of Award of Attorney's Fees, Costs, and Incentive Award ("Motion for Attorneys' Fees"). (ECF No. 65).

On December 5, 2013, Plaintiff filed a Motion for Final Approval of Class Action Settlement. (ECF No. 68).

On December 12, 2013, the Court held a fairness hearing. (ECF No. 69). No Class members appeared.

### **TERMS OF THE PROPOSED SETTLEMENT**

The proposed settlement class (the "Class") consists of "all persons who made a credit card purchase at a [Louis Vuitton] store in California during the period from May 20, 2010 to January 28, 2013 and who were requested to and did provide personal identification information, excluding transactions where such personal identification information was collected for shipping, delivery, servicing or repairing of the purchased merchandise or for special orders or paid holds." (ECF No. 62-1 at 24).

#### **I. Class Benefits**

"Class members have been presented with the opportunity to submit a claim for a Merchandise Credit. The Settlement Administrator received 23,876 timely claims. Thus, these 23,876 individuals who timely submitted a valid claim will receive Merchandise Certificates in the amount of \$41.00.<sup>2</sup>" (Declaration of Matthew J. McDermott - Class Administrator, ECF No. 68-3 ¶ 10).

"The Merchandise Certificates will be good for all purchases at stand-alone Louis Vuitton retail stores in California, may not be combined, are fully transferable, and have a one-year expiration on use. The Merchandise Certificates cannot be redeemed at leased store locations within department stores." (ECF No. 62-1 at 10) (citing Exh. 1, Settlement Agreement, § III(C)).

#### **II. Class Notice**

"In compliance with the Court's Preliminary Approval Order dated August 15,

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<sup>2</sup> Under the Settlement, the actual amount of each Merchandise Certificate will be \$1 million divided by the total number of qualifying claims rounded down to the nearest whole dollar. \$1 million divided by 23,876 is \$41.88.

2013 ... LVNA provided notice to the Class in four ways: Direct Email Notice, Direct Mail Notice, Publication Notice and Website Notice. The Class Notice ... described, inter alia, the claims in the lawsuit, the terms of the Settlement, and the procedures for objecting to the Settlement and for electing to be excluded from the Class and the Settlement. The Notice also informed Class members that they are permitted to appear at the Fairness Hearing on December 12, 2013, either with or without counsel. LVNA provided Class members with sufficient notice of the Settlement.” (ECF No. 68-1 at 8-9).

**A. Direct Email Notice**

“On September 13, 2013, the Settlement Administrator emailed the Summary Email Class Notice ... to all Class members for whom LVNA has a valid email address. ... The Settlement Administrator sent the Email Notice to 221,717 Class members.... As of December 3, 2013, 296 email notices were returned as undeliverable.” (McDermott Decl. Exh. 2, ECF No. 68-5 ¶¶ 3,7).

**B. Direct Mail Notice**

“On September 13, 2013, the Settlement Administrator mailed a postcard containing the Summary Postcard Class Notice ... to all class members for whom LVNA has a valid mailing address and who were not sent the Summary Email Class Notice.... The Settlement Administrator sent the Summary Postcard Notice to 106,001 Class members.... As of December 3, 2013, 6,245 postcard notices were returned as undeliverable.... The Settlement Administrator re-mailed 233 postcard notices to forwarding addresses provided by the U.S. Postal Service, of which 14 were returned a second time.” (McDermott Decl. Exh. 1, ECF No. 68-4 ¶¶ 3,7).

**C. Publication Notice**

“On September 24, 2013 and September 30, 2013, LVNA published the Publication Notice ... in the Los Angeles and San Francisco editions of USA Today.” (McDermott Decl. Exh. 3, ECF No. 68-6 ¶ 4).

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1 typicality, and adequacy of representation, and must also establish that the questions of  
2 law or fact common to class members predominate over any questions affecting only  
3 individual members, and that a class action is superior to other available methods for  
4 fairly and efficiently adjudicating the controversy.” *Amgen Inc. v. Connecticut*  
5 *Retirement Plans and Trust Funds*, \_\_ U.S. \_\_, 133 S. Ct. 1184, 1191 (2013) (internal  
6 citations omitted). In this case, the Court previously preliminarily certified the  
7 proposed settlement class. (ECF No. 64 at 9-13). At that time, the Court concluded that  
8 the proposed class satisfied the numerosity, commonality, typicality, and adequacy of  
9 representation requirements of Rule 23(a). *Id.* The Court also found that the proposed  
10 class satisfied the predominance and superiority requirements of Rule 23(b)(3). No  
11 party or class member has objected to certification of the settlement class. The Court  
12 reaffirms its prior certification of the class for purposes of settlement.

13 A list of those putative Class members who have timely elected to opt out of the  
14 Settlement and the Class, and who are therefore not bound by the Settlement, the  
15 provisions of the Settlement Agreement, this Order and the final Judgment to be entered  
16 by the Clerk of the Court hereon, has been submitted to the Court in the Declaration of  
17 Matthew J. McDermott, filed in advance of the Final Approval Hearing. All other Class  
18 members (as permanently certified below) shall be subject to all of the provisions of the  
19 Settlement, the Settlement Agreement, this Order, and final Judgment to be entered by  
20 the Clerk of Court.

## 21 **II. Notice**

22 Notice to the putative Class members was comprised of individual mailed and  
23 emailed notice to all known Class members and steps taken to provide notice to  
24 unknown Class members. The Court finds that this notice (i) constituted the best notice  
25 practicable under the circumstances, (ii) constituted notice that was reasonably  
26 calculated, under the circumstances, to apprise the putative Class members of the  
27 pendency of the action, and of their right to object and to appear at the Final Approval  
28 Hearing or to exclude themselves from the Settlement, (iii) was reasonable and



constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) fully complied with due process principles and Federal Rule of Civil Procedure 23.

### III. Fairness of the Settlement

#### A. Legal Standard

Courts require a higher standard of fairness when a settlement takes place prior to formal class certification to ensure class counsel and Defendant have not colluded in settling the case. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Ultimately, “[t]he court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). “The question [the Court] address[es] is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.” *Hanlon*, 150 F.3d at 1027.

Courts consider several factors when determining whether a proposed “settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (*quoting Hanlon*, 150 F.3d at 1027). These factors may include one or more of the following: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of class members to the proposed settlement. *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998); *see also Torrasi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (holding that



only one factor was necessary to demonstrate that the district court was acting within its discretion in approving the settlement).

## **B. Analysis**

### **1. The strength of the case and the risk, expense, complexity, and likely duration of further litigation**

To determine whether the proposed settlement is fair, reasonable, and adequate, the Court must balance against the risks of continued litigation (including the strengths and weaknesses of Plaintiff's case), the benefits afforded to members of the Class, and the immediacy and certainty of a substantial recovery. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000).

The court shall consider the vagaries of the litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, 'It has been held proper to take the bird in hand instead of a prospective flock in the bush.'

*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004).

Plaintiff asserts that the settlement is fair and reasonable in light of the risk, expense, complexity, and likely duration of further litigation if the case were to proceed to trial. (ECF No. 68-1 at 15-16). Specifically, Plaintiff asserts that "the uncertainty as to whether consumers' voluntariness constitutes an affirmative defense creates substantial risk for both sides." *Id.* at 16 (citing Declaration of Gene J. Stonebarger, ECF No. 68-2 ¶ 5). Plaintiff acknowledges the expense and length of continued proceedings necessary to prosecute the litigation against LVNA through trial and appeals. *Id.* In reaching a settlement, Plaintiff has also taken into account the uncertain outcome and the risk of any litigation, "especially in complex actions such as this Class Action, as well as the difficulties and delays inherent in such litigation. This litigation involves complex class action issues, which would involve protracted risky litigation if not settled." *Id.* Given these risks, the Court agrees that the actual recovery through settlement confers substantial benefits on the class that outweigh potential recovery

1 through full adjudication.

## 2 **2. The stage of the proceedings**

3 In the context of class action settlements, as long as the parties have sufficient  
 4 information to make an informed decision about settlement, “formal discovery is not  
 5 a necessary ticket to the bargaining table.” *Linney*, 151 F.3d at 1239 (quoting *In re*  
 6 *Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th Cir. 1982)) (internal quotations  
 7 omitted). In this case, the parties have engaged in formal discovery, “allowing Class  
 8 Counsel and counsel for LVNA to sufficiently evaluate their positions’ strengths and  
 9 weaknesses, and the probable expense of taking this case to trial.” (ECF No. 68-1 at  
 10 18). In addition to conducting discovery, the parties have engaged in extensive  
 11 settlement discussions through the course of this case, including a settlement conference  
 12 with a Magistrate Judge. The case was filed in San Diego Superior Court in May of  
 13 2011, and the parties reached a tentative settlement on February 11, 2013. The parties’  
 14 extensive investigation, discovery, and subsequent settlement discussions during that  
 15 time weigh heavily in favor of granting final approval.

## 16 **3. The settlement amount**

17 To assess whether the amount offered is fair, the Court may compare the  
 18 settlement amount to the parties’ estimates of the maximum amount of damages  
 19 recoverable in a successful litigation. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at  
 20 459. While settlement amounts that are close to the plaintiffs’ estimate of damages  
 21 provide strong support for approval of the settlement, settlement offers that constitute  
 22 only a fraction of the potential recovery do not preclude a court from finding that the  
 23 settlement offer is fair. *Id.* (finding settlement amount constituting one-sixth of the  
 24 potential recovery was fair and adequate). Thus, district courts have found that  
 25 settlements for substantially less than the plaintiffs’ claimed damages may be fair and  
 26 reasonable, especially when taking into account the uncertainties involved with  
 27 litigation. *See Shames v. Hertz Corp.*, No. 07-CV-2174-MMA(WMC), 2012 WL  
 28 5392159 at \*6 (S.D. Cal. Nov. 5, 2012).

1 The Complaint in this case alleges that each Class member is entitled to a civil  
 2 penalty for each violation of California Civil Code section 1747.08(e) in amounts of up  
 3 to \$1,000 per violation. (ECF No. 1-1 at 11). The proposed settlement provides Class  
 4 members with Merchandise Certificates valued at approximately \$1 million. Divided  
 5 by the 23,876 Class members, the settlement provides a \$41.00 Merchandise Certificate  
 6 to each Class member. Given the risk, expense, complexity, and duration of further  
 7 litigation, the Court finds that the amount and terms of the proposed monetary benefits  
 8 to the Class members are fair and reasonable.

9 **4. Whether the class has been fairly and adequately represented**  
 10 **during settlement negotiations**

11 Counsel who represented the class included experienced attorneys at Stonebarger  
 12 Law, APC and Patterson Law Group, APC. Both firms are “very experienced in  
 13 consumer class actions” and “have represented millions of consumers in numerous class  
 14 actions asserting violations of California’s consumer-protection statutes, including the  
 15 Song-Beverly Credit Card Act of 1971.” (ECF No. 68-1 at 18; *see also* ECF Nos. 65-3,  
 16 65-5). Plaintiff’s attorneys are well qualified to conduct this litigation and to assess its  
 17 settlement value. The Court finds that the Class has been fairly and adequately  
 18 represented during settlement negotiations.

19 **5. The reaction of the class to the proposed settlement**

20 The Ninth Circuit has held that the number of class members who object to a  
 21 proposed settlement is a factor the Court may consider in its settlement approval  
 22 analysis. *Shames*, 2012 WL 5392159 at \*8 (citing *Mandujano v. Basic Vegetable*  
 23 *Prods. Inc.*, 541 F.2d 832, 837 (9th Cir. 1976)). The absence of a large number of  
 24 objectors supports the fairness, reasonableness, and adequacy of the settlement. *Id.*;  
 25 *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 175 (S.D.N.Y.  
 26 2000) (“If only a small number of objections are received, that fact can be viewed as  
 27 indicative of the adequacy of the settlement.”); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610,  
 28 624 (N.D. Cal. 1979) (finding “persuasive” the fact that 84% of the class filed no

1 opposition).

2 In this case, Class Notice was given (either by Direct Email Notice or Direct Mail  
3 Notice) to approximately 327,718 potential Class members. (ECF No. 68-1 at 9).  
4 Notice was also given by publication and by website. *Id.* There have been no  
5 objections, and only seven requests to be excluded. *Id.*; *see also* McDermott Decl., ECF  
6 No. 68-3 ¶¶ 8-9. The lack of objections and the small number of Class members who  
7 opted out of the settlement, compared to the large number of Class members who  
8 received Notice, favors approval of the settlement.

### 9 **6. Absence of collusion in the settlement process**

10 In addition to the above considerations, the Court has an obligation to “satisfy  
11 itself that the settlement was not the product of collusion.” *Browning v. Yahoo! Inc.*,  
12 No. 04CV01463(HRL), 2007 WL 4896699, at \*38 (N.D. Cal. Nov. 16, 2007). In this  
13 case, the proposed settlement is the product of “extensive negotiations conducted at  
14 arm’s-length among counsel and a well-respected mediator.” (ECF No. 68-1 at 19).  
15 Participation of a mediator is not dispositive, but is “a factor weighing in favor of a  
16 finding of non-collusiveness.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d  
17 935, 948 (9th Cir. 2011); *Amunrud v. Sprint Commc’ns Co.*, 2012 WL 443751, at \*10  
18 (D. Mont. Feb. 10, 2012) (finding absence of signs of collusion based, in part, on  
19 mediator’s participation); *In re HP Laser Printer Litig.*, 2011 WL 3861703, at \*12-13  
20 (C.D. Cal. Aug. 31, 2011) (same).

21 The case has been “hotly contested since its inception in May of 2011....” (ECF  
22 No. 68-1 at 19). Class counsel for LVNA has demonstrated that they were fully  
23 prepared to litigate this case through final judgment. The Court is satisfied that the  
24 settlement process did not involve collusion.

### 25 **7. Class Action Fairness Act Considerations**

26 When applicable, special considerations arise in cases involving coupon  
27 settlements. CAFA allows a court to approve a coupon settlement “only after a hearing  
28

1 to determine whether, and making a written finding that, the settlement is fair,  
 2 reasonable, and adequate for class members.” 28 U.S.C. § 1712(e). Although the “fair,  
 3 reasonable, and adequate” standard is identical to that contained in Rule 23(e)(2),  
 4 “several courts have interpreted section 1712(e) as imposing a heightened level of  
 5 scrutiny in reviewing such [coupon] settlements.” *True v. Am. Honda Motor Co.*, 749  
 6 F. Supp. 2d 1052, 1069 (C.D. Cal. 2010) (citing *Synfuel Techs., Inc. v. DHL Express*  
 7 *(USA), Inc.*, 463 F. 3d 646, 654 (7th Cir. 2006); *Figueroa v. Sharper Image Corp.*, 517  
 8 F. Supp. 2d 1292, 1321 (S.D. Fla. 2007)). Likewise, Rule 23 itself may require closer  
 9 scrutiny of coupon settlements. *See* Fed. R. Civ. P. 23(h), 2003 Advisory Committee  
 10 Notes (“Settlements involving non-monetary provisions for class members also deserve  
 11 careful scrutiny to ensure that these provisions have actual value to the class.”). Before  
 12 granting final approval, the Court “must discern if the value of a specific coupon  
 13 settlement is reasonable in relation to the value of the claims surrendered.” *True*, 749  
 14 F. Supp. 2d at 1069.

15 The Court must determine whether CAFA applies to the settlement in this case.  
 16 Although CAFA defines other terms, it does not define what constitutes a “coupon.”  
 17 *See* 28 U.S.C. § 1711. Courts have often blurred the distinction between “coupons” and  
 18 “vouchers.” However, they are not equivalent. *See Foos v. Ann, Inc.*, No. 11cv2794  
 19 L(MDD), 2013 WL 5352969, at \*2 (S.D. Cal. Sept. 24, 2013).

20 The distinction between a coupon and a voucher is that a coupon is a  
 21 *discount* on merchandise or services offered by the defendant and a  
 22 voucher provides for *free* merchandise or services.... A coupon requires  
 23 a class member to purchase a product or services and pay the difference  
 24 between full price and the coupon discount.... In contrast, a voucher is  
 more like a gift card or cash where there is an actual cash value, is freely  
 transferable, and does not require the class members to spend any  
 additional money in order to realize the benefits of the settlement.

25 *Id.*

26 The terms of the proposed settlement agreement provide that the 23,876  
 27 individuals who timely submitted a valid claim will receive Merchandise Certificates  
 28 in the amount of \$41.00. (McDermott Decl., ECF No. 68-3 ¶ 10). “The Merchandise

1 Certificates will be good for all purchases at stand-alone Louis Vuitton retail stores in  
2 California, may not be combined, are fully transferable, and have a one-year expiration  
3 on use. The Merchandise Certificates cannot be redeemed at leased store locations  
4 within department stores.” (ECF No. 62-1 at 10) (citing Exh. 1, Settlement Agreement,  
5 § III(C)). Plaintiff contends that the Merchandise Certificates are not “coupons”  
6 because they provide dollar-for-dollar value and are “properly characterized as akin to  
7 cash.” (ECF No. 65-1 at 26). At the December 12, 2013 fairness hearing, Class  
8 Counsel stated that there are several items for sale at Louis Vuitton retail stores in  
9 California that are priced below \$41.00. A Class member would be able to use the  
10 Merchandise Certificate to acquire *free* merchandise, and would not be required to  
11 spend any additional money in order to realize the benefit of the settlement. The Court  
12 finds that the Merchandise Certificates are vouchers and not coupons, and CAFA does  
13 not apply.

14 However, even *if* CAFA applied here, the Court has undertaken the “heightened  
15 analysis” required by the statute. Specifically, the Court has satisfied CAFA’s  
16 requirement that a hearing be held and the Court’s findings be in writing. *See* 28 U.S.C.  
17 § 1712(e). The Court is satisfied that the settlement in this case does not violate  
18 Congress’s concern that in many cases “counsel are awarded large fees, while leaving  
19 class members with coupons or other awards of little or no value.” Pub. L. No. 109-2,  
20 119 Stat. 4, § 2(a)(3).

### 21 **C. Conclusion**

22 The Court finds that the settlement is fundamentally “fair, adequate and  
23 reasonable” under Rule 23(e), and that no evidence of collusion exists. The Court  
24 grants the Motion for Final Approval of Class Action Settlement (ECF No. 68).

### 25 **IV. Motion for Attorney’s Fees & Costs**

26 The parties have agreed upon an award of \$375,000.00 in attorney’s fees and  
27 costs, and a \$5,000.00 incentive award to the named Plaintiff, Deanna Morey. (ECF  
28



1 No. 65-1 at 8). “This compromise was reached by the parties to avoid further litigation  
 2 of these issues and a contested fee motion. Under no circumstances will any of the  
 3 proposed fees and costs diminish the payout to the Class.” (Stonebarger Decl., ECF No.  
 4 65-2 ¶ 4).

#### 5 **A. Relevant Law**

6 Rule 23(h) of the Federal Rules of Civil Procedure provides that, “[i]n a certified  
 7 class action, the court may award reasonable attorneys’ fees and nontaxable costs that  
 8 are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Where a  
 9 settlement produces a common fund for the benefit of the entire class, courts have  
 10 discretion to employ either the lodestar method or the percentage-of-recovery method.”  
 11 *In re Bluetooth*, 654 F.3d at 942.

12 “The lodestar figure is calculated by multiplying the number of hours the  
 13 prevailing party reasonably expended on the litigation (as supported by adequate  
 14 documentation) by a reasonable hourly rate for the region and for the experience of the  
 15 lawyer.” *Id.* After computing the lodestar figure, the district court may then adjust the  
 16 figure upward or downward taking into consideration twelve “reasonableness” factors:  
 17 (1) the time and labor required; (2) the novelty and difficulty of the questions involved;  
 18 (3) the skill requisite to perform the legal service properly; (4) the preclusion of other  
 19 employment by the attorney due to acceptance of the case; (5) the customary fee; (6)  
 20 whether the fee is fixed or contingent; (7) time limitations imposed by the client or the  
 21 circumstances; (8) the amount involved and the results obtained; (9) the experience,  
 22 reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the  
 23 nature and length of the professional relationship with the client; and (12) awards in  
 24 similar cases. *Morales v. City of San Rafael*, 96 F. 3d 359, 363 n. 8 (9th Cir. 1996).

25 The hours expended and the rate should be supported by adequate documentation  
 26 and other evidence; thus, attorneys working on cases where a lodestar may be employed  
 27 should keep records and time sheets documenting their work and time spent. *Hensley*  
 28



1 v. *Eckhardt*, 461 U.S. 424 (1983). But as the Supreme Court has noted, trial courts  
 2 may use “rough” estimations, so long as they apply the correct standard. *Fox v. Vice*,  
 3 \_\_ U.S. \_\_, \_\_, 131 S. Ct. 2205, 2216 (2011).

#### 4 **B. Analysis**

5 The Court applies the lodestar method to calculate and evaluate attorneys’ fees.  
 6 Plaintiff provides the Court with declarations from Gene J. Stonebarger and James R.  
 7 Patterson in support of the Motion for Attorneys’ Fees. (See ECF Nos. 65-2, 65-3, 65-  
 8 4, 65-5). Class counsel calculated their lodestar using current billing rates for the five  
 9 attorneys who worked on this case: \$650 per hour for Gene J. Stonebarger; \$500 per  
 10 hour for Richard D. Lambert, an associate of Stonebarger Law, APC; \$350 per hour for  
 11 Elaine W. Yan, an associate of Stonebarger Law, APC; \$675 per hour for James R.  
 12 Patterson of Patterson Law Group, APC; and \$675 per hour for Allison Goddard of  
 13 Patterson Law Group, APC. (ECF No. 65-1 at 15-16). Plaintiff asserts that the  
 14 requested rates are reasonable because “[d]istrict [c]ourts have, on numerous occasions,  
 15 ‘found reasonable attorneys fees based on rates of \$650 for partner services [and] \$500  
 16 for associate attorney services....’” (ECF No. 65-1 at 16) (citing *Faigman v. AT&T*  
 17 *Mobility LLC*, No. C-06-0462 MHP, 2011 WL 672648, at \*5 (N.D. Cal. Feb. 16, 2011);  
 18 *Suzuki v. Hitachi*, No. C 06-7289 MHP, 2010 WL 956896, at \*3 (N.D. Cal. Mar. 12,  
 19 2010)). The Court finds that the hourly rates charged are reasonable.

20 Class Counsel contends that they had spent approximately 394.6 hours in  
 21 prosecuting this action at the time the Motion for Attorneys’ Fees was filed. (See  
 22 Stonebarger Decl., ECF No. 65-2 ¶ 6; Patterson Decl., ECF No. 65-4 ¶ 5). Stonebarger  
 23 Law, APC has expended 214.1 hours and \$2,524.05 in costs. (Stonebarger Decl., ECF  
 24 No. 65-2 ¶ 6). Patterson Law Group, APC has expended approximately 180.5 hours  
 25 and \$3,004.25 in costs. (Patterson Decl., ECF No. 65-4 ¶ 5). Class Counsel has not  
 26 provided detailed time records, but instead provides general summaries of each firm’s  
 27 billing time. (See ECF Nos. 65-2 at 4-5; 65-4 at 3-5). The summaries and declarations  
 28

1 provide a sufficient showing of the hours counsel performed on this case. As of  
 2 October 30, 2013, when the Motion for Attorneys' Fees was filed, Class Counsel's total  
 3 fee lodestar in this action was \$242,057.50. (Stonebarger Decl., ECF No. 65-2 ¶ 6;  
 4 Patterson Decl., ECF No. 65-4 ¶ 5). In addition, Class Counsel had expended \$5,528.30  
 5 in un-reimbursed expenses in the prosecution of this action, which brought the lodestar  
 6 to \$247,585.80. *Id.*

7 As previously noted, courts may enhance the lodestar figure with a multiplier.  
 8 Plaintiff requests a multiplier of approximately 1.51 in order to bring the lodestar of  
 9 \$247,585.80 to a total fee award of \$375,000.00. Having considered the factors for  
 10 enhancing the lodestar in this action, the Court finds that counsel has displayed skill in  
 11 presenting the claims; bore some risks in bringing this action; the Class received  
 12 benefits because of the action; and the requested fee will not reduce the Class members'  
 13 recovery. For these reasons, the Court will enhance the lodestar figure with the  
 14 requested multiplier of 1.51.<sup>3</sup>

### 15 C. Conclusion

16 The Court approves the award of attorneys' fees, as well as Class Counsel's  
 17 request for litigation costs and expenses, in the total amount of \$375,000.  
 18

### 19 V. Class Representative Award

20 In assessing the reasonableness of an incentive award, several district courts in  
 21 the Ninth Circuit have applied the five-factor test set forth in *Van Vranken v. Atl.*  
 22 *Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995), which analyzes (1) risk to the  
 23 class representative in commencing a class action, both financial and otherwise; (2) the

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24  
 25 <sup>3</sup> Class Counsel further stated that at the time the Motion for Attorneys' Fees was  
 26 filed, they anticipated spending a minimum of another 57 hours to complete the case.  
 27 (Stonebarger Decl., ECF No. 65-2 ¶ 9; Patterson Decl., ECF No. 65-4 ¶ 5). Due to the  
 28 additional time spent on the case after the filing of the Motion for Attorneys' Fees,  
 including preparation for and participation in the fairness hearing on December 12,  
 2013, the actual lodestar number in this case is higher than \$247,585.80, and therefore  
 the multiplier used to reach the requested fee award of \$375,000.00 is actually lower  
 than 1.51.

1 notoriety and personal difficulties encountered by the class representative; (3) the  
2 amount of time and effort spent by the class representative; (4) the duration of the  
3 litigation; and (5) the personal benefit, or lack thereof, enjoyed by the class  
4 representative as a result of the litigation. *Shames*, 2012 WL 532159 at \*21 (citing  
5 *Carter v. Anderson Merchs., LP*, No. EDCV 08-0025-VAP(OPx), 2010 WL 1946784  
6 (C.D. Cal. May 11, 2010)).

7       Class Representative Deanna Morey requests a \$5,000 incentive payment to  
8 compensate for her services as court appointed Class Representative. (Declaration of  
9 Deanna Morey, ECF No. 65-6 ¶ 8). No Class member has objected to the Class  
10 Representative's requested incentive payment. Moreover, the parties have agreed that  
11 the Class Representative's requested incentive award is reasonable because "she  
12 dedicated a significant amount of time and effort in bringing this case forward and  
13 litigating this case, actively participating in this lawsuit, undertaking significant risks,  
14 and achieving substantial class benefits." *Id.* at 24. The Court finds that the \$5,000  
15 incentive award is within the acceptable range of approval, and does not appear to be  
16 the result of collusion. *See, e.g., Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-  
17 00261 SBA (EMC), 2012 WL 5878390, at \*7 (N.D. Cal. Nov. 21, 2012) ("[T]he  
18 settlement provides for an incentive award to the Plaintiff in the amount of \$10,000.  
19 In this District, a \$5,000 incentive award is presumptively reasonable."); *Williams v.*  
20 *Costco Wholesale Corp.*, No. 02cv2003 IEG (AJB), 2012 WL 2721452, at \*7 (S.D. Cal.  
21 Jul. 7, 2010) (approving a \$5,000 award to a class representative in an antitrust case  
22 settling for \$440,000). The Court approves the \$5,000 incentive award for Plaintiff  
23 Deanna Morey.

## 24 CONCLUSION

25  
26 IT IS HEREBY ORDERED that the Motion for Final Approval of Class Action  
27 Settlement (ECF No. 68), and the Motion in Support of Award of Attorneys' Fees,  
28 Costs, and Incentive Award (ECF No. 65) are GRANTED as follows:

1           1.     The Settlement and Settlement Agreement are hereby approved as fair,  
2 reasonable, adequate, and in the best interests of the Class, and the requirements of due  
3 process and Federal Rule of Civil Procedure 23 have been satisfied. The parties are  
4 ordered and directed to comply with the terms and provisions of the Settlement  
5 Agreement.

6           2.     The Court, having found that each of the elements of Federal Rules of  
7 Civil Procedure 23(a) and 23(b)(3) are satisfied, for purposes of settlement only, the  
8 Class is permanently certified pursuant to Federal Rule of Civil Procedure 23, on behalf  
9 of the following persons:

10           All persons who made a credit card purchase at a LVNA store in  
11 California during the period of time from May 20, 2010 to January 28,  
12 2013 and who were requested to and did provide personal identification  
13 information, excluding transactions where such personal identification  
14 information was collected for a special purpose incidental but related to  
the individual credit card transaction, including information relating to  
shipping, delivery, servicing or repairing of the purchased merchandise or  
for special orders or paid holds.

15           The Class members identified in the Declaration of Matthew J. McDermott (ECF No.  
16 68-3 ¶¶ 8-9) as having timely and properly elected to opt out from the Settlement and  
17 the Class are hereby excluded from the Class and shall not be entitled to any of the  
18 benefits afforded to the Class members under the Settlement Agreement. The Court  
19 adopts and incorporates by reference its preliminary conclusions as to the satisfaction  
20 of Rules 23(a) and (b)(3) set forth in the Preliminary Approval Order (ECF No. 64) and  
21 notes again that because this certification of the Class is in connection with the  
22 Settlement rather than litigation, the Court need not address any issues of manageability  
23 that may be presented by certification of the class proposed in the Settlement  
24 Agreement.

25           3.     For purposes of Settlement only, the named Plaintiff is certified as  
26 Representative of the Class and Class Counsel is appointed to the Class. The Court  
27 concludes that Class Counsel and the Class Representative have fairly and adequately  
28 represented the Class with respect to the Settlement and the Settlement Agreement.

1           4.     Notwithstanding the certification of the foregoing Class and appointment  
2 of the Class Representative, for purposes effecting the Settlement, if this Order is  
3 reversed on appeal or the Settlement Agreement is terminated or is not consummated  
4 for any reason, the foregoing certification of the Class and appointment of the Class  
5 Representative shall be void and of no further effect, and the parties to the proposed  
6 Settlement shall be returned to the status each occupied before entry of this Order  
7 without prejudice to any legal argument that any of the parties to the Settlement  
8 Agreement might have asserted but for the Settlement Agreement.

9           5.     Plaintiff and all Class members who are not excluded shall be deemed to  
10 fully and irrevocably release, waive, and discharge Defendant and each of its respective  
11 past, present and future owners, stockholders, parent corporations, related or affiliated  
12 companies, subsidiaries, officers, directors, shareholders, employees, agents, principals,  
13 heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-  
14 insurers, and their respective successors and predecessors in interest, from any and all  
15 past, present, and future liabilities, claims, causes of actions (whether in contract, tort,  
16 or otherwise, including statutory, common law, property, and equitable claims),  
17 damages, costs, attorneys' fees, losses, or demands, whether known or unknown,  
18 existing or potential, or suspected or unsuspected, which Plaintiffs and all Class  
19 members have or may have arising out of or relating to any act, omission, or other  
20 conduct alleged or otherwise referred to in the Action (the "Released Claims").

21           6.     With respect to the Released Claims, Plaintiff and all Class Members who  
22 are not excluded shall be deemed to have, and by operation of the Final Judgment shall  
23 have, expressly waived and relinquished, to the fullest extent permitted by law, the  
24 provisions, rights and benefits of Section 1542 of the California Civil Code, or any  
25 other similar provision under federal or state law that purports to limit the scope of the  
26 general release. Section 1542 provides:

27           **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**  
28           **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**

1 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
2 KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS  
3 SETTLEMENT WITH THE DEBTOR.

4 7. The Court has reviewed the application for an award of fees, costs, and  
5 expenses submitted by Class Counsel and the exhibits, memoranda of law, and other  
6 materials submitted in support of that application. The Court recognizes that Defendant  
7 has not opposed the application for an incentive award of \$5,000.00 to be paid by  
8 Defendant and an award of attorneys' fees and costs of \$375,000.00 to be paid by  
9 Defendant. This agreement is in addition to the other relief to be provided to Class  
10 members under the Agreement. On the basis of its review of the foregoing, the Court  
11 finds that Class Counsel's request for attorneys' fees and expenses is fair, reasonable,  
12 and appropriate and hereby awards fees and expenses to Class Counsel in the aggregate  
13 amount of \$375,000.00 and an incentive award to Plaintiff in the amount of \$5,000.00  
14 to be paid by Defendant in accordance with the terms of the Settlement Agreement.

15 8. Neither the Settlement Agreement nor any provision therein, nor any  
16 negotiations, statements or proceedings in connection therewith shall be construed as,  
17 or deemed to be evidence of, an admission or concession on the part of the Plaintiff, any  
18 Class Member, Defendant, or any other person of any liability or wrongdoing by them,  
19 or that the claims and defenses that have been, or could have been, asserted in the action  
20 are or are not meritorious, and this Order, the Settlement Agreement or any such  
21 communications shall not be offered or received in evidence in any action or  
22 proceedings, or be used in any way as an admission or concession or evidence of  
23 liability or wrongdoing of any nature or that Plaintiff, any Class member, or any other  
24 person has suffered any damage; *provided, however*, that the Settlement Agreement,  
25 this Order, and the final Judgment to be entered thereon may be filed in any action by  
26 Defendant or Class members seeking to enforce the Settlement Agreement or the final  
27 Judgment by injunctive or other relief, or to assert defenses including, but not limited  
28 to, *res judicata*, collateral estoppel, release, good faith settlement, or any theory of


1 claim preclusion or issue preclusion or similar defense or counterclaim. The Settlement  
2 Agreement's terms shall be forever binding on, and shall have *res judicata* and  
3 preclusive effect in, all pending and future actions or other proceedings as to Released  
4 Claims and other prohibitions set forth in this Order that are maintained by, or on behalf  
5 of, the Class members or any other person subject to the provisions of this Order.

6 9. In the event that the Settlement Agreement does not become effective or  
7 is cancelled or terminated in accordance with the terms and provisions of the Settlement  
8 Agreement, then this Order and the final Judgment shall be rendered null and void and  
9 be vacated and all orders entered in connection therewith by this Court shall be rendered  
10 null and void.

11 10. The action and the claims alleged therein are hereby ordered DISMISSED  
12 with prejudice.

13 11. Without in any way affecting the finality of this Order and the final  
14 Judgment, the Court hereby retains jurisdiction as to all matters relating to the  
15 interpretation, administration, and consummation of the Settlement Agreement.

16 DATED: January 9, 2014

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18   
19 **WILLIAM Q. HAYES**  
20 United States District Judge  
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